

McCormick, Barstow, Sheppard,
Wayte & Carruth LLP
James P. Wagoner, #58553
jim.wagoner@mccormickbarstow.com
Alexander R. Morrow, #341052
alexander.morrow@mccormickbarstow.com
7647 North Fresno Street
Fresno, California 93720
Telephone: (559) 433-1300
Facsimile: (559) 433-2300

Attorneys for Defendant GEICO
GENERAL INSURANCE COMPANY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

WAWANESA GENERAL
INSURANCE COMPANY,

Plaintiff,

v.

GEICO INSURANCE GENERAL
INSURANCE COMPANY, a
corporation, WHITNEY TYLER
REQUA, an individual, and DOES 1 to
50, inclusive,

Defendants.

Case No.

NOTICE OF REMOVAL

**[Accompanying Documents:
Declaration of James P. Wagoner]**

**TO THE CLERK OF THE UNITED STATES DISTRICT COURT,
CENTRAL DISTRICT OF CALIFORNIA, TO PLAINTIFF AND
PLAINTIFF'S ATTORNEYS OF RECORD, AND TO OTHER DEFENDANTS
AND THEIR ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE THAT pursuant to 28 U.S.C. §§ 1332 and 1441, *et seq.*, Defendant GEICO GENERAL INSURANCE COMPANY (erroneously sued herein as "GEICO INSURANCE GENERAL INSURANCE COMPANY") (hereinafter "GEICO GENERAL") hereby removes the above-entitled action from the Superior Court of the State of California, County of Los Angeles, Case No. 22STCV12916, to the United States District Court for the Central District of

1 California.

2 Removal is proper for the following reasons:

3 **I. RELEVANT FACTUAL BACKGROUND**

4 **A. Proceedings In the Superior Court**

5 1. On April 18, 2022, Plaintiff WAWANESA GENERAL INSURANCE
6 COMPANY (“Plaintiff” or “WAWANESA”) filed its Complaint in the action entitled
7 *Wawanesa General Insurance Company v. Geico Insurance General Insurance*
8 *Company, Whitney Tyler Requa, and Does 1 to 50*, in the Superior Court of the State
9 of California, County of Los Angeles, Case No. 22STCV12916 (the “Complaint”),
10 naming as defendants GEICO GENERAL, WHITNEY TYLER REQUA
11 (“REQUA”), and DOES 1 to 50. *See* Declaration of James P. Wagoner Exhibit
12 (“Wagoner Decl. Ex.”) A.

13 2. On April 20, 2022, Plaintiff served the Complaint on Defendant GEICO
14 GENERAL. *See* Wagoner Decl. Exs. C, H.

15 3. Defendant GEICO GENERAL is informed and believes that Defendant
16 REQUA has been served, but that no “DOE” defendants have been served as of this
17 date. *See* Wagoner Decl. Ex. I.

18 4. The Complaint arises from a September 2, 2018 incident in which
19 WAWANESA’s insured, Jeremiah Chua, was riding as a passenger in a golf cart
20 driven by GEICO GENERAL’s named insured, Defendant REQUA, when allegedly,
21 “due to [REQUA]’s negligence, careless and/or inattention,” the vehicle fell on its
22 side. Mr. Chua apparently suffered head injuries and a broken finger. In its
23 Complaint, WAWANESA alleges that it paid \$102,497.50 in uninsured motorist
24 benefits to Mr. Chua plus “attorneys fees” because GEICO GENERAL improperly
25 denied coverage under its policy issued to Defendant REQUA.

26 5. In its Complaint, WAWANESA asserts claims for (1) Equitable
27 Contribution as to all Defendants; (2) Contractual Subrogation as to all Defendants;
28 and (3) Declaratory Relief as to all Defendants. WAWANESA prays for (1) damages

1 to be assessed at trial, not less than \$102,497.50; (2) costs of suit; (3) attorneys' fees;
 2 (4) prejudgment interest; (5) declaratory relief; and (6) "such other and further relief
 3 as may be just and proper." *See* Wagoner Decl. Ex. A.

4 **B. Removal Jurisdiction**

5 6. The action is one of which the district courts of the United States have
 6 original jurisdiction on the basis of diversity of citizenship under the provisions of 28
 7 U.S.C. § 1332(a)(1). The action is subject to removal to this Court by Defendant
 8 GEICO GENERAL pursuant to the provisions of 28 U.S.C. §§ 1332, 1441(a) and
 9 1446 in that it is a civil action between citizens of different States in which the amount
 10 in controversy exceeds the sum of seventy-five thousand dollars (\$75,000), exclusive
 11 of interest and costs, and is being "filed within 30 days after the receipt by the
 12 defendant, through service or otherwise, of a copy of the initial pleading setting forth
 13 the claims for relief upon which such action or proceeding is based."

14 7. As more fully discussed below, Defendant GEICO GENERAL alleges
 15 that Defendant REQUA has been fraudulently misjoined as Defendant to this action
 16 and does not have an actual interest in the outcome of this action as to GEICO
 17 GENERAL in that, as more fully explained below, there are two occurrences or
 18 transactions involved consisting of (1) the accident involving Defendant REQUA, and
 19 (2) the alleged failure of GEICO GENERAL on behalf of Mr. Requa to compensate
 20 Mr. Chua for its alleged injuries under its policy. *See* Section G, Joinder and Consent,
 21 *infra*.

22 **C. Citizenship**

23 8. For diversity purposes, a natural person is a resident of the State in which
 24 he or she is domiciled, *Sun Printing & Publ'g Ass'n v. Edwards*, 194 U.S. 377, 383
 25 (1904), and "a corporation shall be deemed to be a citizen of any State by which it has
 26 been incorporated and of the State where it has its principal place of business," *Hertz*
 27 *Corp v. Friend*, 559 U.S. 77, 92–93 (2010).

28 9. At both the time the Complaint was filed and as of the date of the filing

1 of this Notice of Removal, Plaintiff WAWANESA was and is a corporation
2 incorporated under the laws of the State of California with its principal place of
3 business in Manitoba, Canada.

4 10. At both the time the Complaint was filed and as of the date of the filing
5 of this Notice of Removal, Defendant GEICO GENERAL was and is a corporation
6 incorporated under the laws of the State of Maryland, with its principle place of
7 business located in the State of Maryland.

8 11. At both the time the Complaint was filed and as of the date of the filing
9 of this Notice of Removal, Defendant REQUA was and is a resident of the State of
10 California.

11 **D. Amount in Controversy**

12 12. This civil action is being removed to this Court on the basis that it is a
13 civil action between citizens of different states and the amount in controversy exceeds
14 the sum of \$75,000, exclusive of interest and costs.

15 13. Defendant GEICO GENERAL denies that it is liable for any of the
16 damages alleged by Plaintiff. Nevertheless, based on the foregoing, it is clear that
17 Plaintiff seeks an amount in excess of the jurisdictional minimum amount in
18 controversy.

19 **E. Timeliness of the Removal Petition**

20 14. On April 20, 2022, Plaintiff served the Complaint on Defendant GEICO
21 GENERAL. *See* Wagoner Decl. Ex. H.

22 15. This Notice of Removal is filed within 30 days of April 20, 2022, when
23 Plaintiff's Summons and Complaint was served on Defendant GEICO GENERAL
24 within the meaning of 28 U.S.C. § 1446(b)(1).

25 **F. Initial Venue**

26 16. Venue is proper in the United States District Court, Central District of
27 California, because the action was filed in the Superior Court of the State of
28 California, County of Los Angeles. *See* 28 U.S.C. §§ 1441(a), 1446(a).

1 **G. Joinder and Consent**

2 17. Defendant GEICO GENERAL is informed and believes that Defendant
3 REQUA has been served with the Complaint in this action. *See* Wagoner Decl. Ex.
4 I; *see also* *Carolina Cas. Ins. Co. v. Team Equip., Inc.*, 741 F.3d 1082, 1087 (9th Cir.
5 2014) (removing party may allege issues for removal on information and belief).
6 However, Defendant REQUA has not appeared in this action as of the date of this
7 Notice of Removal. *C.f. id.*

8 18. As of the date of this removal, there is no actual case or controversy
9 which implicates both Defendants GEICO GENERAL and REQUA because “there
10 [are] two occurrences or transactions”: (1) the accident involving Defendant
11 REQUA, and (2) the alleged failure of GEICO GENERAL, on behalf of Mr. Requa,
12 to compensate Mr. Chua for his alleged injuries under its policy. *Pena v. McArthur*,
13 889 F.Supp. 403, 406 (E.D. Cal. 1994); *Gruening v. Sucic*, 89 F.R.D. 573, 574 (E.D.
14 Pa. 1981); *Beaulieu v. Concord Group Ins. Co.*, 208 F.R.D. 478, 480 (D.N.H. 2002);
15 *Rodriguez v. Cruz*, 2005 WL 8163227, at *2 (D.S.C., Sept. 1, 2005); *Hinrichs v.*
16 *Burwell*, 2021 WL 1341083, at *4 (W.D. Wash., Feb. 23, 2021); *see also* *HVAC Sales,*
17 *Inc. v. Zurich American Ins. Group*, 2005 WL 2216950, at *7 (N.D. Cal., July 25,
18 2005).

19 19. Thus, this Court should disregard the joinder of Defendant REQUA
20 under the doctrine of “fraudulent misjoinder.” *See Morris v. Princess Cruises, Inc.*,
21 236 F.3d 1061, 1067 (9th Cir. 2001). “Fraudulent joinder ... ‘is a term of art.’” *Id.*
22 (quoting *McCabe v. General Foods Corp.*, 811 F.2d 1336, 1339 (9th Cir. 1987).
23 Under the doctrine, “joinder of a non-diverse defendant is deemed fraudulent, and the
24 defendant’s presence in the lawsuit is ignored for purposes of determining diversity,
25 if the Plaintiff fails to state a cause of action against a resident defendant, and the
26 failure is obvious according to the settled rules of the state.” *Id.* (internal quotation
27 marks omitted).

28 20. Federal courts have applied the fraudulent misjoinder doctrine in three

1 situations: (1) where there is no possibility that Plaintiff can prove a cause of action
 2 against the resident (non-diverse) defendant, (2) where there is outright fraud in
 3 pleading jurisdictional facts (e.g., false statements regarding party's citizenship), and
 4 (3) where a diverse defendant is joined with a non-diverse defendant as to whom there
 5 is no joint, several, or alternative liability and where the claim against the diverse
 6 defendant has no real connection to the claim against the non-diverse defendant.
 7 *Triggs v. John Crump Toyota, Inc.*, 154 F.3d 1284, 1287 (11th Cir. 1998); *see also*
 8 Schwarzer, Tashima & Wagstaffe, California Practice Guide, Federal Civil Procedure
 9 Before Trial, § 2:671 (2002) ("The term 'fraudulent' is not used in the tort sense. No
 10 intent to deceive or other 'bad' motive on Plaintiff's part need be shown.").

11 21. Notwithstanding Plaintiff's allegation in its Complaint filed on April 18,
 12 2022, there is no common controversy between WAWANESA and both REQUA and
 13 GEICO GENERAL, thereby rendering Defendant REQUA "fraudulently misjoind"
 14 in the action. This is demonstrated by WAWANESA's allegations in its Complaint
 15 which seek contribution and subrogation from GEICO GENERAL for failing to pay
 16 benefits to Mr. Chua under its policy, a controversy which is unrelated to any potential
 17 liability which REQUA may have to Mr. Chua, to whom WAWANESA is
 18 subrogated, for negligence arising from the underlying accident. *See Pena*, 889 F.
 19 Supp. at 406 ("[T]here were two occurrences or transactions—the automobile
 20 accident between plaintiff and McArthur and the alleged breach of fiduciary duty by
 21 State Farm in handling plaintiff's claim. These are two distinct torts (negligence and
 22 bad faith claim) committed by different defendants at different times, and they
 23 resulted in the invasion of separate legal interests. Additionally, there is no allegation
 24 that the named defendants acted in concert or that McArthur knew of State Farms
 25 alleged misconduct. Accordingly, joinder is improper."); *Gruening*, 89 F.R.D. at 574
 26 ("There were two distinct torts committed by different defendants at different times,
 27 and they resulted in the invasion of separate legal interests."); *Beaulieu*, 208 F.R.D.
 28 at 480 ("The reasoning of *Pena* and *Gruening* applies with even greater force to the

1 instant case. Plaintiff’s claims against Concord Group and Huang seek remedies for
 2 deprivations of two separate legal interests—contractual coverage for accidents
 3 caused by underinsured motorists, and a remedy for alleged negligent driving.”);
 4 *Rodriguez*, 2005 WL 8163227, at *2; *Hinrichs*, 2021 WL 1341083, at *4; *see also*
 5 *HVAC Sales*, 2005 WL 2216950, at *7 (joinder under circumstances stated in *Pena* is
 6 valid under state law but invalid under Federal Rules of Civil Procedure); *see also*
 7 *Morris*, 236 F.3d at 1067–68 (removing defendants are “entitled to present the facts
 8 showing the joinder to be fraudulent” and a Court may “pierce” the pleadings and
 9 consider “summary judgment”-type evidence).

10 22. GEICO GENERAL has now been “joined with a nondiverse defendant
 11 as to whom there is no joint, several or alternative liability and where the claim[s]
 12 against [GEICO GENERAL have] no real connection” to any claims against REQUA.
 13 *See Triggs*, 154 F.3d at 1287. There is no joint, several, or alternative liability for any
 14 of the claims which Plaintiff is currently asserting. Like the Defendants in *Pena*,
 15 *Gruening*, and *Beaulieu*, WAWANESA seeks two separate “remedies for
 16 deprivations of two separate legal interests [from GEICO GENERAL and REQUA]—
 17 contractual coverage for accidents caused by underinsured motorists, and a remedy
 18 for alleged negligent driving.” *Beaulieu*, 208 F.R.D. at 480. Thus, under the doctrine
 19 of “fraudulent misjoinder,” the Court should disregard the joinder of REQUA as a
 20 defendant and consider this action to be diverse pursuant to 28 U.S.C. §§ 1332,
 21 1441(a) and 1446. *Morris*, 236 F.3d at 1067.

22 23. On the above bases, Defendant GEICO GENERAL alleges that
 23 Defendant REQUA has been fraudulently joined. Therefore, REQUA has not been
 24 properly “joined” in this action such that his consent or joinder to this removal is not
 25 required under 28 U.S.C. § 1446 (b)(2)(A). *See id.* (presence of a fraudulently joined
 26 non-diverse “defendant is ignored for the purposes of determining diversity”).

27 24. As such, GEICO GENERAL requests that WAWANESA’s action
 28 against REQUA be severed pursuant to Federal Rule of Civil Procedure 21 which this

1 Court may do “at any time, on just terms.” *See Pena*, 889 F. Supp. at 407. Upon
2 severance, it is submitted that the action between WAWANESA and REQUA should
3 be remanded to State Court as there is no diversity of citizenship between those
4 parties.

5 **II. CONCLUSION**

6 Wherefore, GEICO GENERAL prays that this action be removed to the United
7 States District Court, Central District of California, from the Superior Court of the
8 State of California, County of Los Angeles and that WAWANESA’s action against
9 Defendant REQUA be severed pursuant to Rule 21.

10
11 Dated: May 20, 2022

McCORMICK, BARSTOW, SHEPPARD,
WAYTE & CARRUTH LLP

12
13
14 By: _____



James P. Wagoner
Alexander R. Morrow
Attorneys for GEICO GENERAL
INSURANCE COMPANY

15
16
17 8400616.1